

August 13, 2019

Michael S. Regan

Secretary of the N.C. Department of Environmental Quality

Linda Culpepper

Director of Division of Water Resources

217 West Jones Street

Raleigh, NC 27603

Re: Atlantic Coast Pipeline - Petition for Revocation of 401 Water Quality Certification

Dear Mr. Regan and Ms. Culpepper,

Thank you for your service to the people of North Carolina protecting our natural resources. A great threat to those resources and the people who value them lies in expanding use of fossil fuels through new pipelines like the proposed Atlantic Coast Pipeline. All pipelines create environmental damage during construction, but they also threaten safety and environmental health from leaks and emissions. These risks fall heaviest in North Carolina on the Lumbee community in Robeson County, with analysis showing the Atlantic Coast Pipeline and its related projects creating an environmental injustice. Facts we have discovered since January of 2018 show significant adverse impact to the largest community of American Indians east of the Mississippi River from the construction and operation of the Atlantic Coast Pipeline and projects dependent on it. Correct information not considered by DEQ shows that the impacts analyzed in the 401 and the FERC EIS were a mere fraction of the impacts directly related to the project. We ask you to revoke the 401 Certification since it was based on incorrect information and conditions have changed since the certification was issued.

I. SUMMARY OF BASIS FOR REVOCATION: NEWLY DISCOVERED INFORMATION SHOWS MAJOR PROJECT IMPACTS

The North Carolina Department of Environmental Quality (DEQ), through its Division of Water Resources (DWR), issued a § 401 certification under the Clean Water Act of 1972 (CWA) to Atlantic Coast Pipeline (ACP) on January 26, 2018, based on the application of Atlantic Coast Pipeline, LLC for a 401 certification and the Environmental Impact Statement (EIS) produced by staff of the Federal Energy Regulatory Commission (FERC). The 401 certification process represented a comprehensive opportunity for DEQ to protect the North Carolinians and their water resources from impacts related to the construction and operation of the ACP and the projects dependent upon it.

As mentioned in the cover letter from ACP to DEQ dated May 8, 2017, Atlantic Coast Pipeline, LLC (ACP LLC) is a company formed by Dominion Energy, Duke Energy, Piedmont Natural

Gas, and AGL Resources. ACP LLC members Duke Energy and Dominion Energy have disclosed plans showing that the FERC EIS was segmented, preventing the “hard look” required pursuant to the National Environmental Policy Act (NEPA) by FERC and DEQ on the actual scope of the project. Flooding which occurred following Hurricanes Florence and Michael in Robeson County in the fall of 2018 along rights of way cleared for construction show additional permanent impacts not considered by FERC EIS or DEQ. (Note that severe weather in the future will become more frequent due to climate change.)

Based on new information presented in the latest rounds of Integrated Resource Plan development proceedings before the North Carolina Utilities Commission, shows that all projected demands for gas in North Carolina is no longer needed. In addition, renewable alternatives to gas electric generating units are now the least cost option for electric power generation in North Carolina. All the environmental impacts of building this pipeline should be avoided since it is not needed by the public.

FERC staff made basic math errors in its assessment of impacts on Indian tribes, grossly understating the impact to these communities with erroneous modelling. No measurable benefit has accrued or will accrue to the Lumbee communities from the ACP project. It is crucial that impacts to the Lumbee communities along the pipeline route be analyzed in the EIS. Yet, this analysis is not included in the report. Specifically, Natural Gas facilities in Robeson County were excluded from analysis, even though they are directly related to the ACP. The math and scoping errors in the FERC EIS were discovered and documented after the 401 was issued and serve as basis to revoke the 401 Certification since the FERC EIS was a primary source of factual information relied upon by DEQ in issuing the certification.

Lumberton is listed as the second most diverse city and Robeson is listed as the fourth most diverse county in North Carolina. Since the issuance of the 401 certification, facts show the ACP will disproportionately impact low-income communities Indigenous Peoples and people of color, including the largest Native American community east of the Mississippi River, the Lumbee nation. Additionally, the citizens from the communities most impacted by this pipeline and all of its related projects have not been given a fair opportunity to voice their concerns and share what is occurring on the ground. DEQ has the power and authority under the Clean Water Act to rectify this injustice. As further detailed below the facts show that the 401 Certification for the ACP should be revoked.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Clean Water Act Empowers and NC Law Directs 401 Certification Decisions to Meet Water Quality Standards set Forth in N.C. Gen. Stat. § 143-211 and Implementing Rules

The CWA empowers each State to evaluate the impacts of any significant federal action on water quality in that State. Such significant “federal actions” include projects that require a CWA § 404 permit to discharge dredging or filling materials into the waters of the United States. States have the power, under CWA § 401, to deny certification for such projects. Section 401 certification acts as a check on the Federal Energy Regulatory Commission (FERC) licensing of pipeline projects. The Clean Water Act expressly requires States to apply their water quality standards to a federal license applicant in order to ensure that the licensed project will not impede the State in upholding these water quality standards. See 33 U.S.C. 1341; see also J.B. RUHL ET AL., *THE PRACTICE AND POLICY OF ENVIRONMENTAL LAW* 306 (2008). State water quality standards must be approved by the United States Environmental Protection Agency under § 303 of the Clean Water Act, 33 U.S.C. § 1313. State water quality standards established under § 303 provide an important “supplementary basis . . . so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.” EPA v. California ex rel. State Water Res. Control Bd., 426 U.S. 200, 205 n.12 (1976). States therefore may impose more stringent water quality controls. See 22 U.S.C. § 1311(b)(1)(c). A state may not grant § 401 certification, unless it finds that **the project and the applicant** “will comply with” these intrastate water quality standards. See 33 U.S.C. § 1341(a). Section 1341(d) further provides that “effluent limitations or other limitations” may be imposed as “necessary to assure that any applicant” will comply with the Clean Water Act and state regulations.

Under the Clean Water Act, water quality standard consists of three elements: (1) one or more existing or designated “uses” of a water body, (2) water quality “criteria” indicating the amount of a pollutant that may be present in the water body while still protecting the uses, and (3) a provision restricting degradation of certain types of waters. Designated uses include fish and aquatic life, fishing, boating, aesthetic quality, irrigation and water supply. When met, these standards must be able to protect the designated uses. ***The Clean Water Act’s requirements are the floor for environmental standards enacted by North Carolina, not its ceiling.*** The General Assembly has set seven minimum criteria when the Environmental Management Commission enacts North Carolina’s water quality standards. North Carolina’s standards must be designed to:

- 1) protect human health,
- 2) prevent injury to plant and animal life,
- 3) prevent damage to public and private property,
- 4) insure the continued enjoyment of the natural attractions of the State,
- 5) encourage the expansion of employment opportunities,
- 6) provide a permanent foundation for healthy industrial development,
- 7) secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources.

N.C. Gen. Stat. § 143-211(c).

Numerous state water quality issues are implicated within the Project area and the State has adopted a broad array of requirements affecting water quality to protect the public welfare and serve the purposes of the Clean Water Act that are directly relevant to § 401's designated scope of review.

B. United States Supreme Court Precedent Establishes that North Carolina's Jurisdiction Under Section 401 of the Clean Water Act Broadly Covers Both the Applicant and the Project With North Carolina's Anti-degradation Rules

The US Supreme Court, when reading the two subsections of § 401 together, has explicitly determined that the “activity as a whole” may be scrutinized by state water quality standards if it can be categorized as an activity that has a discharge. See PUD No. 1 of Jefferson County v. Wash. Dep't of Ecology, 511 U.S. 700, 711–12, 727–28 (1994) (recognizing the broad scope of § 401). In other words, the Court's view of the statute is that while the activity must have a discharge to fall into the § 401 subject matter box, applicable water quality standards may extend beyond the discharge itself if it is related to the activity producing the discharge. See id. EPA's regulations implementing § 401 support the application of water quality standards to activity-related conditions as opposed to discharge-related ones. See 40 CFR § 121.2(a)(3)(2009). Therefore, States may “condition certification upon any limitations necessary to ensure compliance with state water quality standards.” PUD No. 1, 511 U.S. at 713–14. This broad scope permits North Carolina to impose limitations needed to prevent adverse secondary impacts from the ACP. N.C.'s constitutionally-mandated policy of preservation and the general water quality standards set by statute in N.C. Gen. Stat. § 143-211 empower DEQ to protect natural resources and North Carolinians from adverse impacts of the project, not just the discharges of fill material in jurisdictional water bodies. US Supreme Court precedent also supports reading Section 401(d) as also providing broad authority for DEQ to ensure that the applicant meets all water quality standards. Section 401(d) “expands the State's authority to impose conditions on the certification of a project.” PUD No. 1, 511 U.S. at 727. Namely, the certification must ensure that the *applicant* will comply with the Clean Water Act and State law requirements. As the US Supreme Court pointed out, this language “refers to the compliance of the applicant, not the discharge.” Id. Under the mandate of § 401(d), the Department must “impose ‘other limitations’ on the project in general to assure compliance with various provisions of the Clean Water Act and with ‘any other appropriate requirement of State law.’” Id. at 727–28 (quoting § 401(d)). The focus of § 401(d) is on ensuring that the applicant and the activity complies with State and federal water quality regulations. According to the US Supreme Court, “§ 401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.” Id. at 728.

As such, § 401(d) provides broad authority for DEQ to examine the applicant's compliance in related activities – specifically, the operation of applicant's pipeline project and all related projects under the applicant's sphere of influence. Section 401 certification is **mandatory** and the State does not have discretion to limit the scope of its review. The statutory language of § 401(d) makes this perfectly clear: "Any certification provided under this section **shall** set forth . . . limitations . . . and monitoring requirements necessary to assure that any applicant for a Federal license or permit **will comply** with any applicable . . . limitations" 33 U.S.C. § 1341(d) (emphasis added). In addition, § 401(b) guarantees State authority over other applicable water quality requirements: "Nothing in this section shall be construed to limit the authority of any department or agency . . . to require compliance with any applicable water quality requirements." Id. § 1341(b).

The broader goals of the Clean Water Act are: "to recognize, preserve, and protect the **primary responsibilities and rights of States** to prevent, reduce, and eliminate pollution." Id. § 1251(b). It is not enough to merely meet standards on paper or in the future under the old expression, "the solution to pollution is dilution." The federal antidegradation policy establishes three tiers of protection, depending on the quality of the water at the time a state sets the Standard. First, no matter the quality of the water, the standard must maintain and protect existing uses. Second, for waters with water quality exceeding that necessary to protect uses, a state must set the standard to maintain that level of quality. Finally, states must maintain and protect the existing level of quality for waters designated as "outstanding National resources" due to their "exceptional recreational or ecological significance." Thus, the Clean Water Act aims not only to protect uses, but also to maintain high quality water. North Carolina's antidegradation policy goes beyond the federal minimum. North Carolina's antidegradation policy requires "the Environmental Management Commission to maintain, protect, and **enhance** water quality within the State of North Carolina." 15A NCAC § 02B .0201 (Antidegradation Policy) (emphasis added). The Administrative Code also explicitly requires "protection of downstream water quality standards" in the water quality certification process. 15A NCAC § 02H .0506(b)(5).

C. NC Law Requires 401 Certification Decisions to Protect Natural Resources as a Public Trust

The Constitution of the State of North Carolina declares what the policy of the State shall be with respect to environmental protection and resource conservation. Article IV, § 5 reads:

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of

the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

This section constitutes North Carolinian's Environmental Bill of Rights. This general public trust obligation is the lens through which the State's statutes, rules, regulations, and procedures must be read in order to ensure cohesiveness with its foundational goals. This provision is the guiding source of the NC General Assembly's power to enact legislation and DEQ's authority to interpret its power to prevent pollution. All pollution prevention enactments and their implementing rules must be judged with the Environmental Protection Clause in mind. In all its decisions, DEQ has a duty to carry out its powers to implement the protections afforded to the lands and waters for the benefit of all its citizenry.

The General Assembly has advanced this constitutional directive by enacting the General Statutes which enshrine these values, including Chapters: 113, 113A, 113B, 130A, 130B, 132, 139, 143, 143B, 146, 150B, 156, 159, 159A, 159B, 159C, 159G and 162A. Among this comprehensive system of laws is found Article 21 of Chapter 143, captioned, "Water and Air Resources," wherein the General Assembly declares its intent for those laws: "to achieve and to maintain for the citizens of the State a total environment of superior quality. **Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources** in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare." N.C. Gen. Stat. § 143-211(a) (emphasis added). North Carolina's Environmental Policy Act also recognizes that the State's "role as trustee for future generations" requires it to carefully consider all state agency actions. See N.C. Gen. Stat. § 113A-3. The General Assembly's enactments clearly show their intent to clarify the legal points (a) that natural resources belong to the people and (b) that the State bears responsibility to preserve and develop these resources as a public trust. This trust may not be devolved to private interests. See N.C. Const. art. I, §§ 32 and 34. As applied to decisions under Section 401 of the Clean Water Act, the duty to protect the public trust is the responsibility of the General Assembly to the Commission and to its staff at DEQ.

D. DEQ Has the Authority to Revoke the 401 Certifications Under 15A NCAC 02H .0507 Based on a Finding of Changed Conditions Since the Certification was Made or Incorrect Information was Presented

DEQ has the authority to revoke or modify any 401 certification they have issued under 15A NCAC 02H .0507(d)(2). The rule provides that, "Any certification issued pursuant to this Rule shall be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if conditions under which the certification was made have changed." New information presented by the undersigned show that the conditions

under which the certification was issued have changed. New information presented below also indicates that information submitted in support of the certification was incorrect. **Both triggers for revocation have been met.**

Pursuant to 15A NCAC 02H .0112(b)(4), DEQ also has power to suspend the 401 certification pursuant to Rule .0114(a). In turn, 15A NCAC 02H .0114(a) authorizes DEQ to revoke or modify permits for “(1) violation of any terms or conditions of the permit; (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; (3) a change in any condition that requires either a temporary or a permanent reduction or limitation of the permitted discharge.” The relevant facts of the ACP project’s need, scope, purpose and impacts on environmental justice communities were not disclosed by the applicant during the process. Changed conditions demonstrate that the ACP serves no need justifies for this project. DEQ has power to remedy the injustice against these communities by suspending and revoking the 401.

E. Law Mandates Comprehensive Review of FERC Pipeline Projects Under 401 Certification, Including Cumulative and Secondary Impacts

Regulatory agencies have long recognized that applicants with projects subject to review under the National Environmental Policy Act are incentivized to “segment” their projects in applying for environmental permits—to describe and analyze only one construction segment, rather than all projects directly related to it, which lead permitting agencies to reduce the scrutiny of adverse environmental impacts of the project. To address this concern, the Code of Federal Regulations requires agencies to consider connected, similar, and cumulative actions in the same EIS, and not to segment such actions out. 40 C.F.R. § 1508.25(a)(1)-(3). “Connected” actions are those that:

- (1) “[a]utomatically trigger other actions which may require environmental impact statements”;
- (2) “[c]annot or will not proceed unless other actions are taken previously or simultaneously”; **or**
- (3) “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” § 1508.25(a)(1).

The Fourth Circuit has explained that “in determining whether actions are connected so as to require consideration in the same EIS, courts employ an ‘independent utility’ test, which asks whether each project would have taken place in the other's absence. If so, they have independent utility and are not considered connected actions.” Webster v. U.S. Dep't of Agric., 685 F.3d 411, 426 (4th Cir. 2012) (citations omitted).

“Cumulative” actions are those that, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2).

Finally, “similar” actions are those that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may request to (and for the purpose under NEPA, demand to) analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.” 40 C.F.R. § 1508.25(a)(3). 40 C.F.R. § 1508.25 clarifies that agencies determining the scope of an EIS shall consider the direct, indirect, *and* cumulative impacts of connected, cumulative, and similar actions. The prohibition of segmentation obviously applies to agency permitting decisions. However, to the extent that such agency decisions result from intentional and systematic misrepresentation by applicants, both environmental and deterrent interests warrant the re-examination of permitting decisions, and call for fresh analysis that incorporates the best and most recent information available about both a permitted project and other connected projects in the region. Part III details information that has come to light **since** the approval of the permit. **Part IV.A will apply these new facts to the law on segmentation of agency review.**

North Carolina’s state law incorporates these principles of federal law. “The North Carolina Court of Appeals has stated . . . that ‘to the extent that the federal environmental law is relied upon to meet the requirements of NCEPA, the federal requirements are by reference enforceable against North Carolina agencies as state law.’ . . . For this reason, in determining whether State Defendants were substantially justified in preparing the FEIS the court will consider NEPA’s implementing regulations. Furthermore, for simplicity of language, the court will refer primarily to NEPA rather than to both NEPA and NCEPA when discussing the adequacy of the FEIS. N. Carolina All. for Transp. Reform, Inc. v. U.S. Dep’t of Transp., 151 F. Supp. 2d 661, 678 (M.D.N.C. 2001) (citing *Orange County v. North Carolina Dep’t of Transp.*, 46 N.C.App. 350, 368 (1980)).

III. NEW INFORMATION AND CHANGED CONDITIONS DISCOVERED SINCE PERMIT CERTIFICATION

A. Alternatives to Natural Gas-Fueled Electric Generating Units are Less Costly for Consumers and Avoid the ACP’s Adverse Impacts

Most capacity for the ACP was subscribed by its electric utility partners who cited increased demand for electricity to be supplied by new gas-fired electric generating units proposed by the partners. Evidence submitted in 2018 in the North Carolina Utilities Commission’s Integrated Resource Planning (“IRP”) processes have shown that these demand projections are wrong. Indeed,

the evidence submitted shows that the least cost and most flexible method of meeting electricity demand in North Carolina relies on renewables, and not the ACP or its associated gas-fired plants.

During the 2018 IRP, North Carolina Attorney General's Office (AGO) produced evidence to show that conditions regarding the economic circumstances related to energy production and its impacts associated with natural gas production have changed. In a letter before the North Carolina Utilities Commission dated March 7, 2019 (Docket No. E-100, Sub 157, hereinafter referred to as "AGO Letter"), the AGO identified three areas where further analysis about the project was warranted given new information regarding the economic conditions of the energy industry, specifically that: "(i) Duke's modeling should test a wider range of storage technologies paired with renewable energy generation; (ii) planning should take into account the costs to ratepayers from climate change caused by natural gas power generation; and (iii) Duke's modeling should consider demand-side management, using energy efficiency resources, on a level playing field along supply-side alternatives."

The first new condition the AGO noted was a decrease in economic cost of renewable energy technology. AGO Letter at Page 5. The AGO Letter cited two studies noting downward trends in the cost of utility-scale renewable energy and battery storage technologies also known as "solar-plus-storage" technology. The decrease in cost of renewable technologies has led other utility projects to take more expansive consideration of solar-plus storage and other renewable energy technologies. For instance, NV Energy announced a plant on May 31, 2018 that will add battery capacity equal to 25% of their solar capacity. However, "Duke's initial modeling screen included nine natural gas-burning technologies, two coal technologies, two nuclear technologies, and two stand-alone storage technologies, [sic]" but included only one solar-plus-storage technology configuration in their initial model. No analysis about the ACP has been provided regarding the new conditions relating to the cost of renewable energy production and storage.

Expert modelling analysis submitted in the IRP by Intervenors Southern Alliance for Clean Energy, Sierra Club and Natural Resources Defense Council showed that the least cost and most flexible option for generating electric power under a power dispatch model included no new gas plants beyond those already under construction. In a filing before the North Carolina Utilities Commission dated March 7, 2019 (Docket No. E-100, Sub 157, hereinafter referred to as "SACE Filing"), the SACE Filing shows that Duke Energy's IRP's reliance on new gas plants to meet demand upon retiring coal plants cost consumers more than replacing coal with renewables coupled with storage. Energy efficiency was also cited as reducing need for new gas plants as projected. The SACE Filing's proposal would directly save consumers billions of dollars: "The total system cost under the IRP case comes in at \$5.6 billion more than under the economically optimized case. Translated to the cost to the average residential customer, the IRP case results in bills that are 3% higher than in the economically optimized case by 2030, and about 5% higher than in the optimized

case by 2035. “ SACE Filing at Page 5.

The AGO Letter also noted the additional costs associated with natural gas production including those caused by climate change. AGO Letter at Page 7. The AGO noted that “climate change has real costs that are ultimately borne by ratepayers” due to hurricanes, extreme temperatures, flooding, and drought exacerbated by climate change. See 4th National Climate Assessment, Hsiang et al. 2017, Emanuel 2018

The need, scope and impact analysis from the FERC EIS was based on demand forecasts for gas plants which are no longer economically feasible to build. Analysis conducted of the overall gas demand across the ACP in Virginia and North Carolina shows that projected gas plant growth has declined sharply and with it demand for the ACP’s gas. In a report authored by the Institute for Energy Economics and Financial Analysis, analysts compared projected demand versus actual demand and finding no demonstrated need for the gas supplied by the ACP. (See “The Vanishing Need for the Atlantic Coast Pipeline: Growing Risk That the Pipeline Will Not Be Able to Recover Costs From Ratepayers” by Cathy Kunkel, IEEFA Energy Analyst, January 2019) The stated need for the ACP in the FERC EIS and the 401 Certification is factually wrong and was based on outdated information. Thus, the ACP 401 must be revoked.

Additionally, reporting of ACP’s economic benefits was based on misrepresentations about the economic impact of the project, which touted positive growth but did not evaluate economic costs to communities. Dominion Energy submitted a Revised “Cumulative Impacts Assessment for Johnston, Cumberland, and Robeson Counties, North Carolina” (dated December 20, 2017), which asserted that the proposed pipeline will encourage significant economic development and that its cumulative adverse impacts would be minor. However, the basis of this assertion was a regurgitation of demographic information in Robeson County without context or analysis of costs. (See Report “The Failure of the Atlantic Coast Pipeline to Demonstrate Economic Development Benefit to the NC Department of Environmental Quality and the Public of North Carolina” Compiled by Nancy LaPlaca, Energy Consultant, and published the Alliance to Protect our People and Places We Live “APPPL” in January, 2018) The ACP Cumulative Impacts supplement does not account for the economic costs that will be generated by increased waste and noise pollution, as well as visible obstruction that will be caused by the project. Notably, the document did not specify specific industries that needed additional gas capacity as requested by DEQ. Nor did it evaluate the adverse impacts of these proposed industrial developments.

B. New Changes to the Legal and Regulatory Landscape

Since the certification of the permit, legal and regulatory conditions relevant to the 401 Certification have changed. ACP construction has been halted multiple times due to permit deficiencies found during judicial review and resultant appeals. Additionally, delays in construction of gas plants proposed to be served by the ACP due to flat demand and regulatory scrutiny by Virginia and North

Carolina's utility officials make the prospect of the ACP's economics more like a bailout than a windfall. Lastly, natural gas infrastructure's impacts to climate change must be considered in permitting decisions and related environmental assessments. On October 29, 2018, Gov. Cooper issued Executive Order No. 80 regarding North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy. (See "Executive Order No. 80, "North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy" (Oct. 29, 2018). The order established new requirements on State agencies regarding climate change. Among other requirements, the Order sets a goal of reducing statewide greenhouse gas emissions to 40% below 2005 levels by 2025; requires that cabinet agencies evaluate the impacts of climate change on their programs and operations, and; orders DEQ to develop a statewide Clean Energy Plan.

Recent case law supports requiring that federal agencies determining a Finding of New Significant Impact must include thorough research on the impacts a proposed project has on climate change. See WildEarth Guardians v. Zinke, 368 F. Supp. 3d 41, 86 ERC 4692 (D.D.C. 2019), Court Opinion (D.D.C. Mar. 19, 2019). In the WildEarth case, the Court found an EA/FONSI defective because the agency reviewing a proposed oil and gas drilling project "failed to take a hard look at the climate change impacts of oil and gas drilling because the EAs (1) failed to quantify and forecast drilling-related greenhouse gas (GHG) emissions; (2) failed to adequately consider GHG emissions from the downstream use of oil and gas produced on the leased parcels; and (3) failed to compare those GHG emissions to state, regional, and national GHG emissions forecasts, and other foreseeable regional and national BLM projects. The WildEarth case supports the argument that oil and gas infrastructure project reviews cannot be segmented out of reviewing impacts caused by the greenhouse gas emissions associated directly with the project and its intended customers.

C. Cumulative Environmental Impacts of the ACP Include Past, Present, and Reasonably Foreseeable Activities Associated With the Project, Including the Transport South beyond North Carolina and Possible Export Overseas

DWR has published guidance on assessing cumulative impacts in its 401 programs. (See Guidance available at: https://nc.gov/ncdeq/files/Water%20Quality/Surface%20Water%20Protection/401/Policies_Guides_Manuals/FnewtiveImpactPolicy.pdf). Since 2004, DEQ has said that it shall determine whether any "project does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards." DEQ defined cumulative impacts as those "environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertaken such other actions."

From June 27, 2017 to December 14, 2017, DEQ sent four letters to ACP LLC directing the company to submit additional information with a focus on the cumulative impacts that might be caused by the construction of the ACP project. In particular, DEQ made it clear to ACP in more

than one request that (i) the “analysis of cumulative impact is required regardless of whether these projects are separate from ACP, not within ACP's purview or undertaken by entities other than ACP,” (ii) “the analysis should include potential secondary and cumulative impacts (e.g., from anticipated development resulting from the construction of the pipeline),” and (iii) the “analysis is for past or reasonably anticipated future impacts, including expansion of the pipeline beyond the current terminus in Robeson County.”

The ACP's Final Assessment Report submitted on December 20, 2017, contains a list as Attachment 1, entitled “Past, Present, and Reasonably Foreseeable Future Projects in Johnston, Cumberland, and Robeson Counties, North Carolina” (on pages from 1-1 to 1-4) (Attachment). The Attachment summarizes the components of the ACP project with potential cumulative impacts identified in each county. According to the Final Assessment Report, ACP's project will have “minimal adverse impacts on the waterbodies within the watershed basin and sub-basin crossed” and “minimal cumulative effects are anticipated when the impacts of the ACP are considered along with the projects identified in Attachment 1.” (Attachment 1)

Attachment 1 was expanded on multiple occasions until ACP was granted 401 certification in January 2018. ACP's Final Assessment Report disclosed that among all the projects in the Attachment, only 4 proposed projects associated with Piedmont Natural Gas were connected to the ACP:

- Piedmont Natural Gas Facility Modifications at the Smithfield M&R Station in Johnston County;
- Piedmont Natural Gas Facility Modifications at the Fayetteville M&R Station in Cumberland County;
- Piedmont Natural Gas Facility Modifications at the Pembroke M&R Station in Robeson County; and
- Piedmont Natural Gas 26 miles of 20-in Diameter Pipeline in Robeson County.

This short list of projects related to the Atlantic Coast Pipeline failed to acknowledge, assess, and clarify its cumulative impact in relation to the full scope and scale of existing and planned PNG pipeline infrastructure. This included two existing projects and up to seven planned projects, counting those under design and construction at the time of the permit application. The full construction of the M&R stations and their impact, not mere “modifications”, were neither acknowledged as linked directly to the pipeline's development and the transport of its gas, nor assessed in terms of their environmental and community impact. Finally, there is one project cited in the ACP application with only a site assessment with no reference to a potential future activity and project. In total, there are nine natural gas projects that are presently in existence, under construction, or formally planned which are directly connected to the Atlantic Coast Pipeline in Robeson County. All

nine of these natural gas projects are within an 8-mile radius of the ACP terminus in Pembroke/Prospect in the heart of the Lumbee community, the largest Native American community east of the Mississippi River.

When all nine natural gas projects in relation to the ACP in Robeson County are acknowledged and analyzed, the cumulative impact of the Atlantic Coast Pipeline is significant, not minimal as claimed in the ACP application. All nine of these natural gas projects and one potential biogas project should have been fully acknowledged and detailed within the ACP permit application and considered by DEQ when assessing the cumulative impacts of the Atlantic Coast Pipeline. Together, they form a complex of interrelated natural gas infrastructure, the cumulative impacts of which are greater than the sum of their parts. These nine projects are:

(1) The existing PNG/Duke Pipeline, which transects the ACP terminus en route extending from the Transco pipeline to Wilmington, NC.

(2) The existing Compressor Station that compresses natural gas along an existing PNG pipeline that crosses the ACP terminus.

(3) The terminus of the Atlantic Coast Pipeline: The terminus is located in the same complex as the existing PNG/Duke Energy Pipeline (1) and Compressor Station (2). Property was purchased across the road from the existing pipeline and compressor station for the ACP, the Metering and Regulating Station, and the intersection of up to four natural gas pipelines at this location. The scale of existing and planned natural gas infrastructure at this site was not fully described, detailed, or assessed in terms of its cumulative impact and risk to water quality, public health, and public safety in the ACP 401 permit application.

(4) A new PNG/Duke Metering and Regulating Station. The ACP was granted a Conditional Use Permit to construct the M&R Station from the Robeson County Board of Commissioners on August 7, 2017. The stated purpose of the construction of the M&R station is to carry ACP Gas along the new PNG Pipeline to Duke Energy's Smith Energy Center in Hamlet and provide gas for a new LNG facility in the Wakulla/Maxton area. By describing the M&R Project as one of "Facility Modifications" does not fully disclose the scope and scale of the construction project, which more than doubled the footprint of PNG/Duke Energy's aboveground industrial complex in Prospect.

(5) PNG Line #434 Pipeline: This pipeline is described as 26 miles of 20-inch Diameter Pipe. It was built to carry ACP gas to the Smith Energy Center in Hamlet along with gas to the LNG facility nearby. Although constructed to transport ACP gas, this pipeline was segmented out of the ACP FERC EIS and received separate approval through other state and federal regulatory review pro-

cesses. This separate approval does not exempt the ACP from assessing its potential impact on water quality when its impact is aggregated as a part of the total, collective impact of all the existing and planned natural gas infrastructure in the 8-mile radius of the ACP terminus. The construction of this pipeline contributed to additional flooding following Hurricane Florence in September 2018. Line #434 crosses beneath the Lumber River, a National Wild and Scenic River.

(6) PNG/Duke Energy Liquidified Natural Gas Facility (LNG): On July 13, 2018 Piedmont Natural Gas, a Duke Energy subsidiary, announced plans to build and operate a 1 billion-cubic-foot LNG near Wakulla in Robeson County. Proposed construction of the facility was planned to begin in 2019 with an estimated completion date in 2021. Piedmont Natural Gas claims that the project is independent from the ACP; however, a Piedmont spokesperson stated they will have a choice of using gas from Transco or the ACP. Frank Yoho, president of the natural gas business for Duke Energy told the Charlotte Business Journal that “the new storage facility can use gas from either the existing Transco Pipeline, currently the state’s only interstate pipeline, which runs through Western North Carolina, or the ACP.” The LNG facility was not discussed in the cumulative impact statement despite claims that the facility could process ACP gas.

(7) A connector pipeline required to transport gas to the LNG facility. Currently there is no pipeline running to the site of the LNG facility. Piedmont Natural Gas held an Open House regarding the LNG facility on May 30, 2019 at Oxendine Elementary School, located one mile from the LNG site. At the meeting, PNG officials discussed the need to construct a 4 -mile pipeline to connect the LNG to the #434 Pipeline. Although officials have stated that the ACP could serve the facility, the connector pipeline was not referenced, assessed, or included in the cumulative impact statement of the ACP in its permit application.

(8) Pipeline Extension to South Carolina: The ACP disclosed its plan to transport gas to South Carolina from Pembroke in their response to DEQ dated June 27, 2017. This plan indicates that new pipelines will intersect and connect in Pembroke. However, in ACP’s later responses to DEQ, ACP neither recognized nor assessed the cumulative impact of the construction of this significant addition to natural gas infrastructure on water resources and quality. Instead, it stated that it had no plan to extend ACP beyond Pembroke, which prevented DEQ’s ability to cumulatively assess the impacts of the plan.

In order to transport gas to South Carolina from the ACP terminus, a fourth pipeline would be needed to connect to the three other pipelines at the ACP terminus. The four pipelines connecting would be the existing PNG pipeline, the recently-completed PNG Line #434 Pipeline recently completed, the ACP, and the South Carolina extension. This fourth pipeline would also traverse numerous swamps, wetlands, and the Lumber River on its way to South Carolina. This additional pipeline, referenced once in the ACP application but segmented out of review was never assessed in terms of its cumulative impact on Robeson County. Whether this constituted a material omission or misrep-

resentation warrants further investigation by DEQ. Denials by ACP officials regarding the expansion of the ACP beyond the Pembroke terminus are highly contradictory to other written and oral statements indicating planned extension.

On June 27, 2017, DEQ asked ACP “[w]hat percentage or volume of new transportation capacity will be used for conversion of coal-fired plants to natural-gas versus the amount for new facilities.” ACP responded in writing on July 12, 2017 that “[w]ith the existing facilities and the proposed gas generation growth in North Carolina, the transportation service from ACP is critical to the growing gas generation needs of DEP and DEC.” Specifically, (i) with respect to the existing facilities, ACP referred to the provision of fuel source to the existing Duke Energy Progress (DEP) and Duke Energy Carolinas (DEC) facilities through interconnects with Piedmont Natural Gas; (ii) with respect to the proposed gas generation growth, ACP mentioned that DEP and DEC each prepared a planning document called an Integrated Resource Plan (IRP) which detail the generation needed for each utility to meet the forecasted electricity requirements for its customers over the next 15 years. In particular, ACP mentioned a new natural gas combined cycle that will be placed into service in Anderson County, South Carolina.

On December 20, 2017, ACP submitted a report on “Cumulative Impacts Assessment for Johnson, Cumberland and Robeson Counties, North Carolina,” (Final Assessment Report). In the Final Assessment Report, ACP LLC indicated that (i) the terminus of the pipelines was located at “Junction A” in Robeson County, North Carolina, which is also a proposed point of delivery of natural gas to Piedmont’s existing pipeline; and (ii) “Atlantic has no commitment to potential customers or reasonably foreseeable plans to extend ACP beyond the current terminus. Because there is no planned expansion that can be scoped or analyzed, the potential for extension of the pipeline is not addressed in this report.” ACP LLC’s statements from June lack credibility.

During the ACP permit application process, plans to take the ACP gas into South Carolina from the terminus in Pembroke had been denied. Yet, Dan Weekly, Dominion Energy’s vice president and general manager of Southern pipeline operations, confirms in a statement to the Associated Press on September 29, 2017, that there are existing plans to extend the ACP beyond the Pembroke terminus. When asked about ACP expansion, he states that there will be a need to add “horsepower, upstream” to move the gas to South Carolina. His statements indicate that there will need to be an additional compressor station constructed at the ACP terminus in order to further transport the gas.

Weekly stated: “...Even though it dead ends in Lumberton, of course, it’s 12 miles to the border. Everybody knows it’s not going to end in Lumberton.... We could bring in almost a billion cubic feet a day into South Carolina by just adding horsepower, upstream. So those are one of the things, and I get to question the alternative (to volume) all the time. So, I get this question everyday: which direction are you turning? And I answer it very simply. You tell me where the load is and I’ll tell you which way we are turning. Because do we hug 95 and come down what I’ll call the huge

growth areas along the ocean there? Not without power generation you're not. You cannot cobble together enough hospital, or I mean, excuse me, hotel load and everything else. It's not going to be there. If we need to turn to meet power generation in what I'll call the mid-state midlands area, we will turn to the southwest. So, but I don't know which that's going to be. You all tell me. We'll turn one way or the other.” <https://www.apnews.com/d9e1216747d642abb025dedb0043462f/APNews-Break:-Disputed-East-Coast-pipeline-likely-to-expand>; Dan Weekley’s remarks were made at the 2017 South Carolina Clean Energy Summit, according to video obtained by AP, September 2017. Archived link: <https://web.archive.org/web/20171028203356/https://thinkprogress.org/atlantic-coast-pipeline-expansion-5d5bfa25f26e/>

In 2015, Dominion Energy bought the CGT interstate pipeline from SCANA (South Carolina’s largest gas and electric company). The CGT has “the widest geographic coverage [of pipelines] in South Carolina,” according to the South Carolina Energy Office. In 2018, Dominion acquired SCANA outright. In subsequent months, Dominion Energy steadily built in the direction of South Carolina, even as Duke and Dominion have continued to dance around the truth with the South Carolina Public Services Commission about its intent to build the ACP out across the border from North Carolina. [See the following: Bo Peterson, “Dominion’s 600-Mile Gas Pipeline Heading in Direction of South Carolina,” *The Post and Courier*, Sep. 9, 2018. <https://web.archive.org/web/20180724092745/https://news.duke-energy.com/releases/piedmont-natural-gas-to-build-new-liquefied-natural-gas-facility-in-north-carolina> (Dominion building ACP toward South Carolina); Frank Yoho (President of natural gas operations, Duke Energy), testimony before S.C. Public Services Commission, pp. 22-23, November 29, 2017, <https://dms.psc.sc.gov/Attachments/Matter/5a208a6c-5f43-45be-9aa9-ab60a3108b7f> (answering the Commission’s question about what it would take to build into South Carolina, “Once we get [the ACP] built, it becomes — for the next tranche of capacity, I believe it’ll be the most competitive place to go get capacity to either expand or extend. And as we know, it’s not a long extension to get to other markets, whether it be others in North Carolina or South Carolina. But the number one thing in order to get it expanded is to get it built. . . . [T]here are no — current plans are for the current markets, but the expectation is that, given the benefits of natural gas — and this will be the low-cost, I believe, way to get gas into the Carolinas region — as soon as we can get it built and the markets can justify it, I think there are great opportunities there.”). See also Thomas Farrell (CEO, Dominion Energy), Transcript of Proceeding before the Public Service Commission of South Carolina, Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E, November 16, 2018, <https://web.archive.org/web/20190319213726/https://dms.psc.sc.gov/Attachments/Matter/6cc0dd99-bb4d-4c8b-af02-34c1f3fc8fa7> (in response to Commission's asking whether ACP would be expanded into South Carolina, “We would hope that demand will arise, and that the pipeline would be extended into South Carolina, but we have no plans to do so today, but I would hope that that happens.”).]

The evidence of the ACP’s failure to inform DEQ of this plan and analyze its environmental consequences and cumulative impact of this additional pipeline in its application is substantial. The withholding of this information and its segmentation from the ACP permit application are grounds for revocation of the permit. Its segmentation from its FERC application also raises serious regulatory and permitting questions.

(9) Hwy 72 Rail Site: In its December 20, 2017 submission to the NC Department of Environmental Quality in response to DEQ's request for additional information on December 14, the ACP describes the "Hwy. 72 Rail Site" in Robeson County on pp. 24-25. The site is acknowledged as a site of "project-induced growth" in relation to the ACP. Information provided states that "...new development would most likely occur" at this site (p. 24). Information focuses on the site plan and states: "The conceptual site plan for the Hwy. 72 Rail Site demonstrates that the Certified Site criterion mitigates impacts on water quality."

A one-page map of the Highway 72 Rail Site Conceptual Plan is included in the maps in Item 7, Attachment 3, entitled "General Extent of Potential Growth Areas Identified in Johnston, Cumberland, and Robeson Counties, North Carolina, and Highway 72 Rail Site Conceptual Plan". What is missing from the information provided is any information of what is planned for this site and the cumulative impact of any planned project. The site is within the 8-mile radius and to the southeast of the ACP terminus. It is described as having rail and gas access.

In 2015, Asbury Graphite Inc. of North Carolina received a One NC economic development award to construct a graphite and carbon product processing Carolina plant at 191 Magna Road in this site area near Lumberton. (see EDGE January 11, 2018 Follow-Up. https://www.ncleg.gov/DocumentSites/Committees/JLEDGEOC/2017-2018/Meetings/2018-01-11%20Prosp%20Zones,%20Econ%20Well-Being,%20Utility%20Acct,%20SB%20660,%20ED%20Awards/January%2011,%202018%20Follow-Up/004%20FRD_EDGE_Follow-Up_2018-01-11.pdf.) Asbury Graphite Inc. of North Carolina is a subsidiary company of Asbury Carbons, which conducts business in the oil, gas, and pipeline industries amongst other fields. (Asbury Carbons: Oil, Gas, and Pipeline. <https://asbury.com/applications/oil-gas-and-pipeline/>)

In 2015, Robeson County received a North Carolina Rural Infrastructure Authority Community Development Block Grant to construct a 2,100 linear feet rail spur to allow Asbury Carbons to locate in Lumberton. (NCRIA approves more than \$1.1 million in grants to help with rail access." <https://www.rtands.com/track-maintenance/on-track-maintenance/ncria-approves-more-than-11-million-in-grants-to-help-with-rail-access/>) In 2015, Asbury Carbons Rail Spur received an Industrial Development Fund Utility Account Grant to construct a rail siding connecting Asbury Graphite Inc. of NC to the CSX mainline running from Wilmington to Charlotte. ("Asbury Graphite Win Highlights Rail Allies." <http://www.ncse.org/news-and-media/the-southeast-compass/the-southeast-compass-summer-2015/asbury-graphite-win-highlights-rail-allies>.)

The ACP permit application provided no information on the scope and scale of the project to be developed at this site. It is assumed that the site is possibly being prepared for a carbon fiber plant and there have been local references to support this projection. Information about this project and on the cumulative impact of the Atlantic Coast Pipeline were not analyzed by FERC or DEQ. All of these seven new, natural gas projects, combined with the two pre-existing projects, will have major impact on the environment and health and safety of Robeson County's vulnerable eco-systems and populations. More information is needed in order to determine if the project at this site will have cumulative or secondary impact on the environmental quality on this concentrated area of natural gas infrastructure and expansion.

All nine projects listed above are concentrated in an 8-mile radius in Robeson County, a unique region that is home to a large number of jurisdictional streams and wetlands, nearly all of which drain to the Lumber River, North Carolina's only blackwater stream with National Wild and Scenic River designation. It is one of the most racially diverse, rural counties in the U.S., and one of our nation's poorest with rising poverty, significant health disparities, and a major lack of affordable housing. It has suffered from two major hurricanes in a period of two years, exacerbating its economic and social conditions.

The 401 permit application of the Atlantic Coast Pipeline minimized the major adverse environmental impacts that such massive development of new fossil fuel infrastructure and industry will have on the fragile eco-system, economy, and diverse communities of Robeson County. DEQ should revoke the 401 Certification due to this new information showing the truly massive scope and scale of the ACP and its impacts in Robeson County, where the "Terminus" is really a "Launchpad."

ACP should have disclosed information about these facilities to DEQ and included them on Attachment 1. The correct information on the impacts of directly related facilities provided in this Petition demonstrate that the cumulative impacts analysis of the ACP project was completely understated. The Final Assessment Report does not assess these impacts which would include environmental justice, water quality, wetlands, and water resource impacts from these interconnected project proposals. Whether these projects are new proposals created by changed factual conditions or incorrect omissions from the initial application, they still provide a basis to revoke the 401 Certification.

While it is clear that this is new information for the public as well as DEQ staff, it is unclear when this information became new for the ACP LLC. New pipeline connection pipelines will be needed to transport natural gas from ACP to these new projects. It is our view that the impact of any project being planned by those four energy companies (which include, but not limited to, those identified above) that are relevant to the pipeline should also be assessed cumulatively.

Areas Needing Further Investigation

The relationship between pipeline construction and flooding caused by major hurricanes needs to be explored. Due to experience with the aftermath of the new Piedmont pipeline construction in Robeson County that included Hurricane Florence, new questions have surfaced about the impact of the compacted surface area above pipelines upon wetlands that they cross--and the populations surrounding those wetlands. Swamps in Robeson County, such as the one through which the Piedmont pipeline was built, represent an important natural defense against flooding; they store floodwaters and reduce both ingoing and outgoing floodwater impacts. With a hard-packed trail of impermeable surface along its path, floodwaters can easily flow past the natural barrier of

the swamp, increasing in concentration and strength. Environmental scientists call the resulting sluice a “preferential floodwater path” -- a path of least resistance for water. Prior to pipeline construction, communities in rural areas with serious flooding had previously relied upon the protection of the wetlands to reduce floodwater impacts.

Additional regional projects in neighboring projects may have cumulative or secondary impact on the water quality and quality of life in neighboring counties. What known or future project plans are connected to the placement of the two additional Metering and Regulating Stations in Johnston and Cumberland Counties? What known or future project plans will be the beneficiaries of the taps along the pipeline route. What is the cumulative or secondary impact of project plans for the former Weatherspoon Energy Plant in Lumberton, the Optima KV Biogas facility near Kenansville, and the Enviva Wood Pellet facility near Warsaw? What relationship, if any, do they have with ACP infrastructure and development? The Department of Environmental Quality needs to suspend and revoke the 401 permit and acquire answers to the many questions that were left unanswered in the ACP LLC application.

D. Drastic Increase in Permitted Export of Natural Gas Outside of the U.S.

In the Final Assessment Report, ACP stated that it “has no commitment to potential customers.” It also stated that: “[T]he action forecast for the implementation of the project is informed by demand for natural gas observed in North Carolina. The ACP would serve the growing energy needs of multiple public utilities and local distribution companies (LDCs) in North Carolina. Based on current customer commitments, approximately 79.2 percent of the natural gas transported by the ACP will be used to generate electricity for industrial, commercial, and residential uses. The remainder of the natural gas will be used directly for other residential (9.1 percent), industrial (8.9 percent), and commercial and uses such as vehicle fuel (2.8 percent). By providing access to low-cost natural gas supplies, the ACP will increase the reliability and security of natural gas supplies in North Carolina.”

FERC staff relied on these representations by ACP LLC as it completed its Final EIS issued on July 21, 2017 that “[t]he purpose of ACP is to deliver up to 1.5 billion cubic feet per day of natural gas to customers in Virginia and North Carolina.” Since the FERC EIS was completed and the ACP 401 was issued, public reports show that *the United States is poised to become one of the largest exporters of liquefied natural gas (LNG)* in the next 20 years. Reports indicate exporting as much as 19 Bcf/d by some estimates, thanks to robust production. There is about 24 Bcf/d of U.S. liquefaction capacity either in operation, under construction or approved by both FERC and the Department of Energy (DOE). In total, DOE has approved export licenses for 52.9 Bcf/d. could put upward pressure on domestic prices and expose the previously isolated North American market to global market dynamics in the years to come, according to the U.S. Commodity Futures Trading Commission.⁷ One large facility opened in Elba, Georgia this year and gas from the ACP could

well now be bound for it. The US President has announced an “energy dominance” strategy to make the United States a large exporter of fossil fuels to the world. This strategy includes, among other matters, the exportation of fracked gas to all possible international markets, such as Europe and China. The DOE and FERC approvals facilitate this explosive growth in exports, which benefit fossil fuel extraction companies, utility companies promoting pipeline projects, and their investors.

E. Erroneous Analysis About Impacts to Environmental Justice Communities

ACP LLC failed to disclose, and FERC Staff failed to analyze all relevant information about impacted Environmental Justice Communities. ACP LLC’s discussion of environmental justice consideration is limited to references to the conclusion of FERC EIS that there would be no disproportionately high and adverse impacts. See “ACP Cumulative Impacts Assessment for Metering and Regulation Stations in North Carolina” included in their response to information Request Dated September 14, 2017. p. 42. However, this filing does not address the full scope of impacts that ACP will inflict upon Environmental Justice Communities in Robeson County. Instead, it lumps Robeson County in with other locations along the pipeline’s path in order to perform a single unfocused analysis that almost by design is inappropriate for detecting environmental justice issues.

The obvious flaws in the FERC EIS on analyzing Environmental Justice impacts are part of ongoing appeals before the 4th Circuit in challenges to Virginia’s actions on the ACP. See *Friends of Buckingham et al. v. State Air Pollution Control Board et al.* No. CV 19-1152 (4th Circuit, 2019) Failures by FERC’s EIS to properly analyze disproportionate impacts appear to have occurred in both Virginia and North Carolina. ACP threatens to inflict a wide variety of harms to these vulnerable populations, including interference with their enjoyment of land, disruption and destruction of unmarked ancestral burials and sacred places, contamination of groundwater and aquifers, and general marring of the natural environment. The Lumbee community attaches great cultural and religious importance to the integrity of the natural environment. See Lumbee Tribe of North Carolina, Tribal Consultation and the Atlantic Coast Pipeline, CLLR-2018-0222-01, Feb. 22, 2018. <https://web.archive.org/web/20190322155906/https://www.ncwarn.org/wp-content/uploads/2.23.18-Lumbee-resolution.pdf>

Professor Ryan E. Emanuel, Environmental Science Professor at North Carolina State University, has analyzed the EIS and found that conceptual and methodological errors in FERC’s analysis greatly minimized the extent to which the impact of the ACP disproportionately falls upon poor communities of color along the planned route. See “Comments of Dr. Ryan E. Emanuel, Ph.D. on the Atlantic Coast Pipeline” (2017) For example, DEQ coded negative impacts in census tracts with 75% minority populations as not raising disproportionate EJ concerns—simply because the tracts were located within counties that likewise had a high share of non-white residents. Professor Emanuel observed that:

“Not only does the project cross areas of high poverty in rural Appalachia, but it also runs through the so-called “Black Belt” of Virginia and North Carolina. Both regions have borne disproportionate shares of environmental burdens throughout US history, and their local populations live with an unfortunate legacy of past environmental decision making in which they have had little or no part. These are, quite literally, the textbook study regions for environmental justice. Federal regulators should be first to acknowledge these large-scale, multi-state patterns of inequity and to hold petitioners accountable for their activities in these regions. Instead, the environmental justice conclusions of this DEIS hinge on what is essentially a series of county- level calculations, combined in a mathematically indefensible fashion, and hard-wired to ignore important regional demographic patterns that frame the project as a whole.”
See “Comments of Dr. Ryan E. Emanuel, Ph.D. on the Atlantic Coast Pipeline” (2017)

Dr. Emanuel published papers on his analysis in detail in the prestigious journal, Science. See Ryan E. Emanuel, Flawed Environmental Justice Analyses, Science 21 Jul 2017: Vol. 357, Issue 6348, pp. 260. <http://science.sciencemag.org/content/357/6348/260.1> This analysis shows that the ACP will indeed disproportionately impact low-income communities and people of color. For instance, about 30,000, or 13%, of the people who live within one mile of the proposed route of the pipeline in North Carolina are Native Americans, even though they represent only 1.2% of the State’s total population. (<https://web.archive.org/web/20190116011455/https://thinkprogress.org/native-americans-protest-natural-gas-pipeline-in-north-carolina-c4726edff47a/>) Additionally, a RTI intentional study found “that disproportionately African American residents live within 1 mile of the pipeline route” in Northampton County. (<https://www.rti.org/sites/default/files/resources/rti-publication-file-db772936-3fc3-4448-9a91-9c2b6ebd88a.pdf>) The FERC EIS’ analysis was just plain wrong in applying the math to the maps.

The inadequacies that Dr. Emanuel identified in FERC’s analysis of environmental justice impacts, alone, raises deep concerns both about the usefulness of the analysis and about DEQ’s commitment to engaging in the most rigorous analysis necessary to smoke out, evaluate, and address threats to the state’s most vulnerable communities. DEQ’s reliance on FERC’s analysis fails against the Department’s own standards, as framed by DEQ (then the Department of Environmental and Natural Resources), which resolve that to meet environmental justice goals, DEQ will “[a]ddress environmental equity issues in permitting decisions for projects potentially having a disparate impact on communities protected by Title VI of the Civil Rights Act of 1964.” Additionally, the policy states DEQ’s commitment to “Resolve environmental equity complaints, consistent with the protection afforded by Title VI of the Civil Rights Act of 1964.” Although FERC and ACP made comments about this project’s impacts on Environmental Justice Communities, none of the information about Robeson County’s outlier position on EPA’s environmental justice indices was

disclosed in the permitting process. Nor was the FERC EIS adequate in its assessment of these impacts. Neither the FERC EIS nor the ACP 401 assessed these impacts. The inadequacies of environmental justice review are new information which supports revocation of the 401 Certification.

F. New Information Regarding the Impacts of Climate Change on Impacted EJ Communities

In October 2018, the Intergovernmental Panel on Climate Change (IPCC) issued a special report calling for efforts to limit global warming to 1.5°C above pre-industrial levels. (Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments. <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>) Success in that goal would clearly benefit the world's population as well as natural ecosystems, and would ensure a more sustainable and equitable society (given that climate change is expected to do the most harm to the world's poorest). See Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments. <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/> The report emphasized that limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented transitions in energy generation and consumption, including replacing fossil fuels like natural gas. (Also see Chapter 2: Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development. Pp. 96. <https://web.archive.org/web/20190321205610/https://www.ipcc.ch/sr15/>)

Moreover, ACP's path cuts through a water-dependent landscape surrounding the Lumber River in Robeson County (through which the pipeline intends to run), which is highly sensitive to the effects of climate change. A new analysis of climate change in the Lumber River watershed by the *Journal of Contemporary Water Research and Education* published in April 2018 highlighted the fact that rising temperatures through the mid-21st century will have the potential to expose the surrounding wetlands to heat and drought-related damage. Drought damage would have cascading harms on wetland and aquatic environments, including erosion and sediment transport, increased flood susceptibility, and increased burdens of animal wastewater treatment and disposal.

Those environmental harms are intimately connected with damage that will occur to the Lumbee nation's cultural and spiritual connections to the waters that flow through the lands on which they live. Centuries-old traditions of resource stewardship and religious practices tied to physical areas and natural features would be washed away by changing terrains and receding waters. See *Climate Change in the Lumbee River Watershed and Potential Impacts on the Lumbee Tribe in North Carolina*. P. 88-90. <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1936-704X.2018.03271.x> Notwithstanding the inherently prospective nature of climate change analyses,

the Lumbee's relationship with bodies of water of great historical and cultural value must be reflected and accorded due weight in considering the contributory impact of the Atlantic Coast Pipeline on climate change in Robeson County and the surrounding area, both today and in the future.

IV. CONCLUSION

Information disclosed to DEQ which formed the basis for its decision is incorrect as shown above. In addition, changed conditions in energy markets, permits being overturned in court proceedings, delays and gas markets call for revocation of the 401 Certificate. The new information we have supplied above fully supports a decision to revoke the ACP 401. The NC Department of Environmental Quality gave ACP LLC every opportunity to disclose all pertinent information on the scope, scale, and impact of its proposed pipeline. It failed to do so. Its claim that the cumulative and secondary impact of the Atlantic Coast Pipeline will have minimal impact on the water quality and quality of life in Robeson County is shown to be false, based on math errors, modelling errors and inadequate scope of analysis. The Atlantic Coast Pipeline is not only environmentally harmful, it is also economically irresponsible and unnecessary. It will burden the public with unfair and needless rate hikes. It will counter and eliminate the impact of all public and private efforts to reduce carbon emissions in our State. Furthermore, the ACP places a substantial, unfair burden on the indigenous people of Robeson County, concentrating up to nine natural gas projects in an 8-mile radius in the heart of the Lumbee and Tuscarora communities. The ACP is a short-term project with negative long-term impacts. In addition, this project locks the state and its citizens into a destructive use of energy resources.

On behalf of every ratepayer in North Carolina and every person who enjoys the natural resources belonging to all the people in North Carolina, we petition DEQ to revoke the 401 Certification for the Atlantic Coast Pipeline.

Very Truly Yours,

Donna Chavis, Senior Fossil Fuels Campaigner,
Friends of the Earth

Rev. Mac Legerton, Interim Executive Director
NC Climate Solutions Network

CC: Honorable Roy Cooper, Governor
Honorable Josh Stein, Attorney General